

APPENDIX II
STATE AGENCY FINANCING ADDENDUM
(Equipment)

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APPENDIX II

STATE AGENCY FINANCING ADDENDUM, SERIES 20__ (Equipment)

(Appropriated Funds)

ARTICLE I

DEFINITIONS; CONSTRUCTION; MISCELLANEOUS PROVISIONS; SUPPLEMENTS

Section 1.1 Definitions, Construction, Miscellaneous Provisions, Supplements. Capitalized terms used but not otherwise defined in this Agency Financing Contract shall have the respective meanings given such terms in Part 1 of Appendix I of this Agency Financing Contract, which is incorporated herein and made a part hereof by this reference. This Agency Financing Contract shall be construed in accordance with the Rules of Construction set forth in Part 2 of Appendix I of this Agency Financing Contract, which is incorporated herein and made a part hereof by this reference. The miscellaneous provisions set forth in Part 3 of Appendix I are incorporated herein and made a part hereof by this reference. This Agency Financing Contract may be supplemented and amended from time to time in accordance with Part 4 of Appendix I of this Agency Financing Contract, which is incorporated herein and made a part hereof by this reference.

Section 1.2 Performance by Representatives. Any authority granted or duty imposed upon the State Treasurer or the State hereunder may be undertaken and performed by the Treasurer Representative. Any authority or duty imposed upon the State Agency hereunder may be undertaken and performed by the Authorized Agency Representative.

ARTICLE II

SALE AND PURCHASE OF PROPERTY

Section 2.1 Conditional Sales contract; Master Financing Contract.

(a) *Conditional Sales Contract.* This Master Financing Contract shall constitute a “conditional sales contract,” a “financing contract” and a “master financing contract” within the meaning of the Act.

(b) *Master Financing Contract.* The State Agency acknowledges and agrees that this Agency Financing Contract is subject in all respects to the other terms and provisions of the Master Financing Contract, of which this Agency Financing Contract is a part.

Section 2.2 Appointment of Agents; Acquisition of Property.

(a) *Appointment of Agents.* The State Agency hereby ratifies, approves, confirms, accepts and agrees to its designation and appointment as agent of the Corporation in connection with the acquisition of the Property.

(b) *Acquisition of Property.* The State Agency hereby agrees that (i) it has caused or will cause the Property to be acquired, as agent for the Corporation, with all reasonable dispatch;

(ii) it will make, execute, acknowledge and deliver any contracts, agreements, orders, receipts, documents, writings or instructions with or to any Person and do all other things that may be necessary or desirable to acquire the Property; and (iii) it will pay or cause to be paid the Costs of Acquisition of the Property from funds available to it pursuant to the Master Financing Contract and this Agency Financing Contract. The appointment of the State Agency to act as agent of the Corporation in connection with the acquisition of the Property is made and conferred irrevocably by the Corporation, and shall not be terminated by any act of the State Agency, the State Treasurer, the Corporation or otherwise.

The State Agency shall negotiate or call for bids for the purchase of the Property in accordance with the requirements and limitations, if any, imposed by State law with respect to the purchase of such Property by such State Agency. It is intended by the Parties hereto that the Corporation shall have no responsibility, liability or obligation with respect to the selection or procurement of any of the Property.

(c) *Revision and Substitution of Property.* The State Agency, with the prior written consent of the State Treasurer, may revise any item of Property to be financed or refinanced and acquired pursuant hereto, or the description thereof; *provided*, that (i) such item of Property as so revised shall satisfy the requirements under this Agency Financing Contract and the Master Financing Contract with respect to the substitution of Property previously acquired; (ii) the Costs of Acquisition of such item of Property shall not be materially reduced thereby; and (iii) any such revision shall not relieve the State Agency of its obligation to acquire the Property in accordance herewith and with the Master Financing Contract.

After acquisition of an item of Property, the State Agency, with the prior written consent of the State Treasurer, may substitute for an item of Property acquired pursuant to this Financing Contract other personal property by filing with the State Treasurer (i) a certificate of the State Agency stating that such substitute Property (A) has a remaining useful life equal to or greater than the Property for which it is being substituted; (B) has a fair market value equal to or greater than the fair market value of the item of Property for which it is being substituted; (C) is free and clear of all liens and encumbrances except a first priority security interest in favor of the Fiscal Agent, as assignee of the Corporation, under the Master Financing Contract; (D) is of equal usefulness and value as the Property for which it is being substituted; and (E) is essential to the State Agency's ability to carry out its governmental functions and responsibilities; and (F) is expected to be used by such State Agency immediately and for the term of this Agency Financing Contract; and (ii) an Opinion of Counsel to the effect that such substitution will not cause interest evidenced and represented by the Certificates to be includable in gross income for federal income tax purposes under the Code.

Section 2.3 Acquisition Fund. Pursuant to the Trust Agreement, the State Treasurer shall establish the Acquisition Fund and make disbursements therefrom in accordance with the provisions thereof and of the Master Financing Contract to pay the Acquisition Costs of the Property on behalf of the Corporation. Proceeds of the sale of the Certificates shall be deposited in the Acquisition Fund. Moneys on deposit in the Acquisition Fund shall be invested by the State Treasurer as provided in the Trust Agreement. Disbursements from the Acquisition Fund shall be made as provided in the Trust Agreement. The amount allocable to each State Agency shall be established by the State Treasurer and shall be an amount not to exceed the Acquisition

Costs of its respective Property. The State Agency shall file requisitions with the State Treasurer for the Acquisition Costs of the Property or reimbursement therefor in such form as the State Treasurer shall reasonably require.

If moneys in the Acquisition Fund allocable to the State Agency shall not be sufficient to pay the Acquisition Costs of the Property in full, the State Agency shall cause the Acquisition Costs of such Property in excess of the allocable amount in the Acquisition Fund to be paid from other moneys of such State Agency. Neither the State Treasurer nor the Corporation makes any representation or warranty, either express or implied, that the moneys which will be deposited into the Acquisition Fund allocable to the State Agency will be sufficient to pay the Acquisition Costs of the Property. The State Treasurer and the Corporation shall have no obligation or liability for the payment of the Acquisition Costs of the Property other than from the proceeds of the Certificates and any other amounts that may be provided by the State Agency. If the State Agency shall pay or cause the payment of any Acquisition Costs in excess of the allocable amounts in the Acquisition Fund available for such purpose from other funds, the State Agency shall not be entitled to any reimbursement from the State Treasurer or the Corporation for such payments, nor shall the State Agency be entitled to any diminution, reduction, abatement, postponement, counterclaim, defense or set-off of the Agency Installment Payments, Additional Costs or other amounts otherwise required to be paid hereunder.

The Fiscal Agent, as assignee of the Corporation, shall have no responsibility, liability or obligation under the Master Financing Contract or otherwise with respect to the acquisition of the Property or payment of the Acquisition Costs thereof.

Section 2.4 Title to the Property. All right, title and interest in and to the Property shall transfer to and vest in the State Agency from the Corporation without any further action by the State Agency, the State or the Corporation immediately upon the acquisition thereof or reimbursement to the State Agency for the Acquisition Costs thereof; *provided*, that the State Treasurer and the State Agency shall take such action and execute such documents (including without limitation bills of sale and other title documents) as may be deemed necessary or desirable by the State Treasurer, the State Agency or the Corporation to evidence and confirm such transfer of title pursuant to this Agency Financing Contract and the Master Financing Contract.

Title to any and all additions, modifications, improvements, repairs or replacements to the Property shall vest in the State Agency, subject to the security interest of the Corporation until payment of all amounts due and owing with respect to such Property under this Agency Financing Contract.

Any Property constituting a motor vehicle subject to registration with the State Department of Licensing shall be registered with the State Agency as the registered and legal owner thereof.

Section 2.5 Security Interest.

(a) *State Security Interest.* In order to secure the payment and performance by the State of its obligations under the Master Financing Contract, the State has pledged, granted,

assigned and conveyed to the Corporation a lien on and security interest in all right, title and interest of the State, whether now owned or hereafter acquired, in and to the Property and this Agency Financing Contract, including without limitation the Agency Installment Payments and all proceeds thereof. The State Agency acknowledges and agrees to such pledge, grant, assignment and conveyance, and hereby acknowledges that its right, title and interest in and to the Property is subject to such first priority lien and security interest.

(b) *State Agency Security Interest.* In order to secure the payment and performance by the State Agency of its obligations under this Agency Financing Contract, the State Agency hereby pledges, grants, assigns and conveys to the Corporation a lien on and security interest in all right, title and interest of the State Agency, whether now owned or hereafter acquired, in and to the Property. Accordingly, this Agency Financing Contract constitutes a security agreement. The State Agency acknowledges and agrees that each provision of this Agency Financing Contract is also a provision of the security agreement.

The State Agency further agrees that the Corporation may: (i) commingle Property which comes into its possession; (ii) re-pledge such Property upon terms which impair the State Agency's right to redeem such Property; and (iii) require the State Agency to assemble the Property and make it available to the Corporation in a manner which is reasonably convenient to both Parties. To the extent the Corporation is required for any reason to provide commercially reasonable notice to the State Agency, the State agrees that notice mailed by first class mail five days before the event of which notice is given is commercially reasonable notice. The standard by which the Corporation's rights and duties with respect to this security agreement shall be measured is gross negligence or willful misconduct.

If required by the Corporation or the Fiscal Agent, as assignee of the Corporation, at any time during the term of this Agency Financing Contract, the State Agency will execute and deliver to the Corporation or the Fiscal Agent, as the case may be, in form satisfactory to the Corporation or the Fiscal Agent, such security agreements, financing statements and/or other instruments covering the Property and all accessions thereto.

Section 2.6 Disclaimer of Warranties. The State Agency acknowledges and agrees that the Property is of a nature, size, design and capacity selected by the State Agency pursuant to its own specifications, and not by the State Treasurer or the Corporation, and that neither the State Treasurer nor the Corporation is a manufacturer, supplier or a vendor of such Property. THE STATE TREASURER AND THE CORPORATION MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AND ASSUME NO RESPONSIBILITY, LIABILITY OR OBLIGATION, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY, OR AS TO THE TITLE THERETO, OR FOR THE ENFORCEMENT OF THE MANUFACTURERS', SUPPLIERS' OR VENDORS' REPRESENTATIONS, WARRANTIES OR GUARANTIES, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE STATE TREASURER OR THE CORPORATION BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGENCY FINANCING

CONTRACT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR USE BY THE STATE AGENCY OF THE PROPERTY.

The Corporation hereby grants, assigns and conveys to the State Agency during the term hereof, for so long as no Agency Event of Default, Event of Default or other event permitting termination of this Agency Financing Contract has occurred and is continuing hereunder, all representations, warranties and guaranties, if any, express or implied, with respect to the Property from the manufacturers, suppliers and vendors thereof, subject, however, to a reservation by the State Treasurer and the Corporation of a right to independently enforce such warranties and guaranties.

No officer, employee or agent of any manufacturer, supplier or vendor is authorized to waive or alter any term or condition of this Agency Financing Contract, and no manufacturer, supplier or vendor shall in any way affect the State Agency's duty to pay and perform its obligations as set forth in this Agency Financing Contract.

ARTICLE III
AGENCY INSTALLMENT PAYMENTS; LIMITED OBLIGATION

Section 3.1 Agency Installment Payments. Each Agency Installment Payment shall consist of an Agency Principal Component and/or an Agency Interest Component as set forth in Exhibit D to this Agency Financing Contract. Interest shall accrue and be calculated as determined by the State Treasurer, which determination shall be binding and conclusive against the State Agency absent manifest error. Each Agency Installment Payment payable hereunder shall be paid to or upon the order of the State Treasurer at such place as the State Treasurer shall direct in writing not less than ten (10) Business Days prior to the Agency Installment Payment Date by electronic funds transfer in lawful money of the United States of America. Payments of Additional Costs shall be made to or upon the order of the State Treasurer. Each Agency Installment Payment shall be applied first to the Agency Interest Component due hereunder, and then to the Agency Principal Component due hereunder.

Section 3.2 Sources of Payment of Agency Installment Payments.

(a) *Agency Financing Contract.* The State Agency hereby acknowledges and agrees that the State is acquiring the Property from the Corporation for and on behalf of the State Agency. Concurrently with the execution hereof, the State shall execute and deliver the Master Financing Contract pursuant to which the State shall agree to make Installment Payments for the acquisition of the Property for and on behalf of the respective Agencies, at such times and in such amounts as provided therein, which will be sufficient in the aggregate to pay the Purchase Price of the Property to be acquired by the State for and on behalf of the State Agency together with all other personal property to be acquired for and on behalf of the other State Agencies, and interest thereon.

(b) *Obligation of State Agency Subject to Appropriation.* That portion of the Installment Payments that is allocable to the Purchase Price of the State Agency Property shall be payable by the State solely from Agency Installment Payments to be made by the respective State Agencies, including the State Agency. The obligation of the State Agency to make its

Agency Installment Payments shall be subject to appropriation by the State Legislature and to Executive Order reduction. The State shall not be obligated to pay that portion of the Installment Payments that is allocable to the Purchase Price of the State Agency Property and interest thereon other than from appropriated funds of the respective State Agencies.

Section 3.3 Deposit and Investment of Agency Installment Payments. The State Agency hereby acknowledges and agrees that the Agency Installment Payments shall be deposited in a special fund or funds maintained by the State Treasurer (the "Agency Installment Payment Fund"). Payments of Agency Installment Payments from State Agencies shall be separately accounted for from payments from the Local Agencies. The Agency Installment Payments due on each Agency Installment Payment Date shall be at least sufficient, in the aggregate, to make the Installment Payment next coming due under the Master Financing Contract. Amounts in the Agency Installment Payment Fund, including investment earnings thereon, shall be used and applied, *first*, to make the Installment Payment next coming due, *and thereafter*, but prior to the next Agency Installment Payment Date, to the extent that amounts remain in such Fund after such Installment Payment is made, to pay Additional Costs or for any other lawful purpose of the State Treasurer. Amounts in the Agency Installment Payment Fund shall be invested in Qualified Investments, and shall be separately accounted for, but may be commingled with other moneys on deposit with the State Treasurer solely for investment purposes. The State Agency shall have no right, title or interest in or to the amounts on deposit from time to time in the Agency Installment Payment Fund.

Section 3.4 No Set-Off. The obligation of the State Agency to make Agency Installment Payments from the sources set forth herein and to perform its other obligations hereunder shall be absolute and unconditional. The State Agency shall make Agency Installment Payments as and when the same shall become due without diminution, reduction, postponement, abatement, counterclaim, defense or set-off as a result of any dispute, claim or right of action by, against or among the State, the Corporation, the Fiscal Agent, any Agency, and/or any other Person, or for any other reason; *provided*, that nothing in this Section 3.4 shall be construed to release or excuse the State Treasurer or the Corporation from the observance or performance of its obligations hereunder or under the Master Financing Contract. If the State Treasurer or the Corporation shall fail to observe or perform any such obligation, the State Agency may institute such legal action and pursue such other remedies against the State Treasurer or the Corporation as the State Agency deems necessary or desirable, including, but not limited to, actions for specific performance, injunction and/or the recovery of damages.

Section 3.5 Limited Obligation. THIS AGENCY FINANCING CONTRACT SHALL CONSTITUTE A SPECIAL, LIMITED OBLIGATION OF THE STATE AGENCY PAYABLE SOLELY FROM THE SOURCES AND SUBJECT TO THE LIMITATIONS SET FORTH HEREIN. THIS AGENCY FINANCING CONTRACT SHALL NOT CONSTITUTE A DEBT OR A GENERAL OBLIGATION OF THE STATE OR OF THE STATE AGENCY, THE CONTRACTING OF AN INDEBTEDNESS BY THE STATE OR THE STATE AGENCY, OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE STATE OR OF THE STATE AGENCY, FOR PURPOSES OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION UPON DEBT OR THE CONTRACTING OF INDEBTEDNESS. THE OBLIGATION OF THE STATE AGENCY TO MAKE AGENCY INSTALLMENT PAYMENTS IS SUBJECT TO APPROPRIATION AND TO EMERGENCY REDUCTION IN

FUNDING UNDER CERTAIN CIRCUMSTANCES, ALL AS SET FORTH IN THIS AGENCY FINANCING CONTRACT. NOTHING IN THIS AGENCY FINANCING CONTRACT SHOULD BE CONSIDERED AS OR CONSTRUED TO IMPLY A MORAL OBLIGATION ON THE PART OF THE STATE OR THE STATE AGENCY TO MAKE THE AGENCY INSTALLMENT PAYMENTS DUE HEREUNDER.

Section 3.6 Assignments by the Corporation. The State Agency acknowledges and agrees that, concurrently with the execution and delivery hereof, the Corporation will unconditionally grant, sell, assign, transfer and convey to the Fiscal Agent without recourse (i) all of its rights to receive the Installment Payments under and pursuant to the Master Financing Contract, (ii) all of its remaining right, title and interest in, to and under the Master Financing Contract and this Agency Financing Contract, and in and to the Property (including any security interest therein), including but not limited to its right to take all actions and exercise all remedies under and pursuant to the Master Financing Contract, pursuant to the Master Assignment in consideration for the payment by the Fiscal Agent to the State Treasurer, as agent of the Corporation, of the proceeds of the sale of the Certificates. The State and the Corporation have acknowledged and agreed that such grant, sale, assignment, transfer and conveyance by the Corporation is intended to be a true sale of the Corporation's right, title and interest, and that upon such grant, sale, assignment, transfer and conveyance, the Corporation shall cease to have any rights, duties or obligations under the Master Financing Contract or this Agency Financing Contract or with respect to the Property, and the Fiscal Agent shall thereafter have all the rights, duties and obligations of the Corporation thereunder and hereunder as if the Fiscal Agent had been the original party thereto and hereto, and every reference therein and herein to the Corporation shall be deemed and construed to refer to the Fiscal Agent, except where the context otherwise requires. Anything herein or therein to the contrary notwithstanding, such grant, sale, assignment, transfer and conveyance shall not confer any rights or impose any duties or obligations on the Fiscal Agent other than as expressly set forth in the Trust Agreement and the Master Assignment.

ARTICLE IV OPTIONAL AND MANDATORY PREPAYMENT OF AGENCY INSTALLMENT PAYMENTS

Section 4.1 Optional Prepayment.

(a) The State Agency may, at its option, prepay all or any portion of its Agency Installment Payments then unpaid, in whole or in part on any date, by causing to be deposited with the State Treasurer money and/or Government Obligations in an amount sufficient for the State Treasurer to prepay or defease the portion of its Installment Payments corresponding thereto in accordance with Subsection 4.1(a) or 4.1(b) of the Master Financing Contract, and to pay any Additional Costs in connection therewith.

(b) The State Agency shall provide the State Treasurer with not less than 60 days' prior written notice of its intention to prepay any of its Agency Installment Payments, which notice shall specify the date of such prepayment, and the amount and the Agency Installment Payment Dates of the Agency Installment Payments to be prepaid. The State Treasurer shall notify the State Agency within fifteen (15) Business Days after receipt of such notice from the

State Agency as to the amount required to be paid in connection with such prepayment or defeasance of the corresponding Installment Payments, including any Additional Costs in connection therewith. The determination by the State Treasurer of the amount to be paid by the State Agency shall be binding and conclusive against such State Agency, absent manifest error.

Section 4.2 Revision of Agency Installment Payments upon Prepayment. The Agency Principal Components and Agency Interest Components of the Agency Installment Payments due on each Agency Installment Payment Date on and after the date of any prepayment pursuant to Section 4.1 hereof, as set forth in Exhibit D hereto, shall be reduced by the State Treasurer to reflect such prepayment, in such amounts and on such Agency Installment Payment Dates as the State Agency shall elect in its written notice to the State Treasurer pursuant to Section 4.1(b) hereof.

Section 4.3 Discharge of Agency Financing Contract. All right, title and interest of the State herein and all obligations of the State Agency hereunder shall cease, terminate, become void and be completely discharged and satisfied (except for the right of the State Treasurer and the Fiscal Agent, as assignee of the Corporation, and the obligation of the State Agency to have the moneys and Government Obligations so set aside applied to make the remaining Agency Installment Payments) when either:

(a) all Agency Installment Payments and all Additional Costs and other amounts due hereunder have been paid in accordance herewith; or

(b) (i) the State Agency shall have delivered a written notice to the State Treasurer of its intention to prepay all of the Agency Installment Payments remaining unpaid; (ii) the State Agency shall have caused to be deposited with the State Treasurer (A) moneys and/or Government Obligations in accordance with Section 4.1 hereof; and (B) an Opinion of Counsel to the effect that such actions are permitted hereunder, under the Master Financing Contract and under the Trust Agreement and will not cause interest evidenced and represented by the Certificates to be includable in gross income for federal income tax purposes under the Code; and (iii) for so long as any Agency Installment Payments remain unpaid, provision shall have been made satisfactory to the Corporation and the Fiscal Agent for payment of all Additional Costs.

ARTICLE V PERMITTED TERMINATION EVENT; REMEDIES

Section 5.1 Permitted Termination Event. The following shall constitute a “Permitted Termination Event” hereunder:

(a) The State Legislature elects not to appropriate sufficient funds within any biennial budget for the purpose of paying the Agency Installment Payments due hereunder during the next occurring Biennium; or

(b) The Governor of the State issues an Executive Order mandating an emergency reduction in State funding;

provided, that the State Agency delivers written notice thereof to the State Treasurer as provided by Section 5.2 hereof.

Section 5.2 Written Notice Describing Permitted Termination Event. If, as of five (5) Business Days following (a) the enactment of each biennial budget by the State Legislature, or (b) an Executive Order reduction in funding, the State Agency determines as a result of such legislation or Executive Order that sufficient funds will not be available to make its scheduled Agency Installment Payments for the Property in the next occurring Biennium or upon a reduction in funding in the manner as set forth above, the State Agency shall deliver not less than 45 days' prior written notice to the State Treasurer, which notice shall describe the Permitted Termination Event, and state that the State Agency has determined (as provided herein) that such Permitted Termination Event will result in the cancellation of this Agency Financing Contract and the related obligation of the State Treasurer under the Master Financing Contract.

Section 5.3 Remedies of the Corporation Upon a Permitted Termination Event. Upon the occurrence of a Permitted Termination Event and upon the Written Request of the State Treasurer, the director or other chief administrator of the State Agency shall, at the beginning of the period for which funds have not been appropriated or for which funding has been reduced, return the Property to the Corporation and thereupon be released of its obligations to make all further Agency Installment Payments hereunder and under the Master Financing Contract with respect to the Property; *provided*, that the State Agency delivers the Property in good repair, working order and condition, ordinary wear and tear excepted, and its unencumbered title to the Corporation at a location in the United States designated by the Corporation as of the end of the last month for which funding has been provided, or the end of the last month for which funding is available in the event of an Executive Order reduction in funding, and written notice is provided by the State Agency directly to the State Treasurer as set forth in Section 5.1 of this Agency Financing Contract. If the State Agency returns the Property pursuant to the terms of this Section, the State Treasurer and the Corporation shall be entitled to retain all sums theretofore transmitted to the State Treasurer or the Corporation by or on behalf of the State Agency for the benefit of the Owners of the Certificates.

The occurrence of a Permitted Termination Event shall not constitute an Agency Event of Default, a Master Contract Event of Default or an Event of Default, and the remedies set forth in this Section relating to the return of the Property are the sole remedies available to the State Treasurer and the Corporation upon such occurrence. If the State Legislature provides a supplemental appropriation or the Executive Order is withdrawn prior to the expiration of the notice period specified above and the State Treasurer or the Corporation has not yet sold, relet or otherwise disposed of the Property, the State Agency may, by written notice to the State Treasurer and the Corporation, revoke its notice of termination and continue its obligations hereunder.

ARTICLE VI
REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

Section 6.1 Representations and Warranties of the State Agency. The State Agency represents and warrants as follows:

(a) The State Agency is a “State Agency” within the meaning of the Act, duly organized and validly existing under the Constitution and laws of the state of Washington.

(b) The State Agency is authorized under the laws of the state of Washington and its Charter or other constituent document, if any, to enter into and perform its obligations under this Agency Financing Contract.

(c) Neither the execution and delivery by the State Agency of this Agency Financing Contract, nor the observance and performance of the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or constitutes a breach of or default under any agreement or instrument to which the State Agency is a party or by which the State Agency or its property is bound, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon the Property, except as expressly provided in this Agency Financing Contract and the Master Financing Contract.

(d) The State Agency has been duly authorized to enter into this Agency Financing Contract pursuant to Resolution No. 987 of the State Finance Committee, adopted on October 7, 2003; and this Agency Financing Contract has been duly executed and delivered by the State Agency.

(e) This Agency Financing Contract is a valid and binding obligation of the State Agency, enforceable against it in accordance with its terms, except as such enforceability may be affected by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors rights generally, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases.

(f) The Property to be financed and acquired pursuant to this Agency Financing Contract is essential to the State Agency’s ability to carry out its governmental functions and responsibilities, and the State Agency expects to make immediate and continuing use of such Property during the term of this Agency Financing Contract.

(g) The useful life of the Property is equal to or exceeds the term hereof.

(h) The State Agency makes no representation or warranty regarding the perfection of any security interest in the Property, the Master Financing Contract or this Agency Financing Contract for the benefit of the Corporation or the Fiscal Agent, as assignee of the Corporation.

(i) There are no circumstances, including any existing Executive Order of the Governor of the State or directive from OFM, presently affecting the State Agency that could reasonably be expected during the term of this Agency Financing Contract to alter its need for the items of Personal Property or adversely affect its ability or willingness during the term of this

Agency Financing Contract to budget funds for the Agency Installment Payments or Additional Costs to become due hereunder.

(j) The State Agency has reviewed its projected revenues and expenditures and reasonably expects that it shall have on hand and legally available appropriated funds sufficient to make all payments when due from it under this Agency Financing Contract

(k) For the current Biennium, the State Agency has received appropriations from the State Legislature sufficient to make all payments scheduled to become due from such State Agency under this Agency Financing Contract during the current Biennium.

Section 6.2 Covenants and Agreements of the State Agency. The State Agency covenants and agrees as follows:

(a) *Budget.* The State Agency shall (i) include in its biennial budget all payments required to be made by the State Agency under Section 1.3 hereof; (ii) submit such budget to OFM at such times and in such manner as required by law; (iii) use its best efforts to obtain appropriations by the State Legislature in amounts sufficient to make any such payments; (iv) include all such payments in its statements of proposed expenditures for each fiscal period required by law to be submitted to OFM; and (v) use its best efforts to obtain allotments by OFM of appropriated funds sufficient to make all such payments.

(b) *Application of Appropriations.* To the extent permitted by law, the State Agency agrees that, to the extent that any amounts are included in its budget for purposes or facilities served, or functions or operations supported or provided, by the Property, the State Agency will allocate a sufficient portion of such amounts to the payment of the Agency Installment Payments and Additional Costs due hereunder.

(c) *Tax-Exemption.* The State Agency shall not make any use of the proceeds of this Agency Financing Contract or the Certificates or of any other amounts, regardless of the source, or of any property, and shall not take or refrain from taking any action, that would cause the Master Financing Contract or the Certificates to be “arbitrage bonds” within the meaning of Section 148 of the Code. The State Agency shall not use or permit the use of the Property or any part thereof by any Person other than a “governmental unit” as that term is defined in Section 141 of the Code, in such manner or to such extent as would result in the loss of the exclusion from gross income for federal income tax purposes of the Interest Component of the Installment Payments under Section 103 of the Code. The State Agency shall not make any use of the proceeds of this Agency Financing Contract or the Certificates or of any other amounts, and shall not take or refrain from taking any action, that would cause the Master Financing Contract or the Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code, or “private activity bonds” within the meaning of Section 141 of the Code, or “hedge bonds” within the meaning of Section 149 of the Code. To that end, for so long as any Agency Installment Payments remain unpaid, the State Agency, with respect to such proceeds and other amounts, will comply with all requirements under such Sections and all applicable regulations of the United States Department of the Treasury promulgated thereunder. The State Agency will at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the Interest Components of the Installment Payments will not be included in

gross income of the Owners of the Certificates for federal income tax purposes under the Code, and will take no action that would result in such interest being so included. The State Agency shall comply with the applicable provisions of the Tax Certificate and Agreement.

(d) *Duties Imposed by Law.* To the extent permitted by law, the covenants, agreements and other obligations on the part of the State Agency contained herein shall be deemed and construed to be ministerial and non-discretionary duties imposed by law, and it shall be the duty of the State Agency and each and every public official of the State Agency to take such actions and to do such things as are required by law in the performance of the official duties of such officials to enable the State Agency to observe and perform the covenants, agreements, terms, conditions and other obligations contained herein to be observed and performed by the State Agency.

(e) *Liens; Sale or Disposal.* The State Agency shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, except the rights of the Corporation as provided herein and in the Master Financing Contract. The State Agency shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The State Agency shall not grant, sell, transfer, assign, pledge, convey or otherwise dispose of any of the Property or any interest therein during the term of this Agency Financing Contract, and any such attempted grant, sale, transfer, assignment, pledge, conveyance or disposal shall be void.

(f) *Performance.* Unless a Permitted Termination Event has occurred, the State Agency shall punctually pay the Agency Installment Payments and any Additional Costs out of funds appropriated by the State Legislature in strict conformity with the terms and provisions hereof, and will faithfully observe and perform all the covenants, agreements, terms, conditions and other obligations contained herein required to be observed and performed by the State Agency. Except for Permitted Termination Events, the State Agency will not suffer or permit any default to occur hereunder, or do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted, or any such omission or refraining from doing anything, would or might be grounds for acceleration or termination of this Agency Financing Contract. Except for Permitted Termination Events, the State Agency will not terminate this Agency Financing Contract for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Property, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of the State, or any failure by the State Treasurer or the Corporation to observe or perform any covenant, agreement, term, condition or other obligation contained herein or in the Master Financing Contract required to be observed and performed by it, whether express or implied, or the bankruptcy, insolvency, liquidation or reorganization of the Corporation. The State Agency assumes the entire risk of loss, from any and every cause whatsoever, to the Property.

(g) *Further Assurances.* The State Agency will preserve and protect the rights of the State Treasurer and the Corporation hereunder, and will warrant and defend such rights against all claims and demands of all Persons. The State Agency will promptly execute, make and deliver any and all further assurances, instruments and agreements, and do or cause to be done

such other and further things, as may be necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming to the State Treasurer and the Corporation the rights and benefits provided to it hereunder.

(h) *Use of Property.* During the term of this Agency Financing Contract, the State Agency will use the Property for the purposes of performing one or more of its essential governmental functions or responsibilities. The State Agency will not permit the Property to be used or operated other than by authorized employees, agents and contractors of the State Agency.

(i) *Notice of Nonpayment.* The State Agency shall give written notice to the State Treasurer, the Corporation and the Fiscal Agent, as assignee of the Corporation, prior to any Agency Installment Payment Date if the State Agency knows prior to such date that it will be unable to make the Agency Installment Payment due on such date, or any portion thereof.

(j) *Use; Repairs.* For so long as the State Agency is in possession of the Property, the State Agency shall be solely responsible for the maintenance and repair, both ordinary and extraordinary, thereof. The State Agency will (i) keep and maintain the Property in good repair, working order and condition, and protect the same from deterioration other than normal wear and tear; (ii) cause the Property to be used within its normal capacity, in the manner contemplated by the manufacturer's specification, and in compliance with the requirements of applicable laws, ordinances and regulations, the requirements of any warranties applicable thereto, and the requirements of any insurance or self-insurance program required under Subsection 5.2(o) hereof; (iii) cause the Property to be used and operated by or under the direction of competent persons only, and obtain all registrations, permits and licenses, if any, required by law for the operation of the Property; and (iv) will pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance of the Property. The State Agency, at its expense, will furnish all parts, mechanisms and devices required to operate and maintain the Property.

(k) *Alterations.* The State Agency will not make any alterations, additions or improvements to the Property without the prior written consent of the State Treasurer unless such alterations, additions or improvements (i) maintain or increase the value of the Property; or (ii) may be readily removed without damage to the Property. All such alterations, additions or improvements shall be deemed to be a part of the Property and shall be subject to the terms and provisions of this Agency Financing Contract.

(l) *Location; Inspection.* The Property will be located within the State. The State Treasurer, the Corporation and the Fiscal Agent, as assignee of the Corporation, will be entitled to inspect the Property during regular business hours upon at least one (1) Business Day's prior notice. The State Agency hereby acknowledges, and consents and agrees to the right of the State Treasurer, the Corporation and the Fiscal Agent to so inspect the Property.

(m) *Impositions and Charges.* If during the term of this Agency Financing Contract, any Imposition is imposed or incurred in connection with the sale and purchase of the Property by the Corporation to the State, or by the State to the State Agency, or the ownership, operation, possession or use of the Property by the Corporation, the State or the State Agency, or the payment of the Agency Installment Payments by the State Agency, or the payment of the Installment Payments payable therefrom by the State, or any fines, penalties or interest imposed

on or with respect to any of the foregoing, the State Agency shall pay all such Impositions and charges when due. The State Agency at its own expense may contest any such Impositions and charges until it obtains a final administrative or judicial determination with respect thereto, unless the Property is encumbered by any levy, lien or any other type of encumbrance because of the State Agency's failure to pay such Impositions or charges. If the State Treasurer or the Corporation pays any such Impositions or charges for which the State Agency is responsible or liable hereunder, the State Agency shall reimburse the State Treasurer or the Corporation therefor as Additional Costs hereunder.

(n) *Risk of Loss; Damage; Destruction; Condemnation.* The State Agency assumes all risk of loss of or damage to the Property from any cause whatsoever, and the obligation of the State Agency to pay the Agency Installment Payments or to perform any other obligation under this Agency Financing Contract shall in no way be released, discharged or otherwise affected for any reason, including without limitation (i) any defect in the condition, quality or fitness for use of, or title to, any portion of the Property, or (ii) any damage to, or abandonment, destruction, requisition, condemnation or taking of any portion of the Property. In the event of damage to any item of the Property, the State Agency will immediately place the same in good repair, working order and condition as required by Subsection 6.2(j) hereof. If the State Agency determines that any item of Property is lost, stolen, destroyed or damaged beyond repair, the State Agency will either (x) replace the same with equipment of equivalent value and usefulness in good repair in accordance with Subsection 2.1(c) hereof, or (y) prepay all of its obligations for Agency Installment Payments and terminate its obligations hereunder in accordance with Subsection 4.3(b) hereof.

(o) *Insurance.*

(i) The State Agency shall maintain, or cause to be maintained, in full force and effect, comprehensive general liability insurance with respect to the Property in such amounts as may be reasonably determined by the State Agency from time to time but in any event not less than \$1,000,000 per occurrence or such greater amount as the State Treasurer may reasonably require from time to time. Such insurance may be carried under a blanket policy with umbrella coverage. Such insurance shall cover any and all liability of the State Agency and its officials, officers, employees and volunteers. Such insurance shall include (A) coverage for any accident resulting in personal injury to or death of any person and consequential damages arising therefrom; and (B) comprehensive property damage insurance.

(ii) The State Agency shall maintain or cause to be maintained in full force and effect fire and extended coverage insurance covering the Property in such amounts and covering such risks as the State Agency may reasonably determine from time to time but in any event not less than the aggregate amount of Agency Installment Payments due hereunder which remain unpaid. Such insurance may be carried under a policy or policies covering other property of the State Agency. In the alternative, the State Agency may assume financial responsibility for any physical damage to and/or loss of the Property; *provided, however*, that if the State Agency elects this option, the State Agency hereby covenants and agrees that it will promptly repair or replace the Property promptly upon any loss or damage thereto.

(iii) The insurance required under paragraphs (i) and (ii) above: (A) shall be provided by a financially responsible insurance company authorized to do business in the State; (B) shall name the State Treasurer, the Corporation and the Fiscal Agent, as assignee of the Corporation, as additional insureds thereunder; (C) shall provide that the same may not be canceled or given notice of non-renewal, nor shall the terms of conditions thereof be altered, amended or modified, without at least 45 days' prior written notice being given by the insurer to the State Treasurer, the Corporation and the Fiscal Agent as assignee of the Corporation; and (D) may be provided in whole or in part through a funded program of self-insurance reviewed at least annually by an insurance actuary.

(iv) A certificate of insurance with respect to the required coverages shall be provided by the State Agency to the State Treasurer on or prior to the date of delivery of the Personal Property Certificate to the State Treasurer.

(v) The State Agency will pay or cause to be paid when due the premiums for all insurance policies required by this Section 6.2(o).

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.1 Agency Event of Default. Each of the following shall constitute an "Agency Event of Default" hereunder:

(a) Failure by the State Agency to pay or cause to be paid any Agency Installment Payment required to be paid hereunder within ten (10) Business Days of the respective Agency Installment Payment Date, other than as a result of a Permitted Termination Event;

(b) Failure by the State Agency to observe or perform any covenant, agreement, term or condition on its part to be observed or performed hereunder, other than as set forth in paragraph (a) above, for a period of thirty (30) days after written notice from the State Treasurer or the Fiscal Agent to the State Agency specifying such failure and requesting that it be remedied, other than as a result of a Permitted Termination Event; *provided, however*, that such period shall be extended for not more than sixty (60) days if such failure cannot be corrected within such period, and the corrective action is commenced by the State Agency within such period and diligently pursued until the failure is corrected;

(c) If any statement, representation, or warranty made by the State Agency in this Agency Financing Contract or in any writing delivered by the State Agency pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect; and

(d) Inability of the State Agency to generally pay its debts as such debts become due, or admission by the State Agency, in writing, of its inability to pay its debts generally, or the making by the State Agency of a general assignment for the benefit of creditors, or the institution of any proceeding by or against the State Agency seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, reimbursement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or for

appointment of a receiver, trustee, or other similar officer of it or any substantial part of its property, or the taking of any action by the State Agency to authorize any of the actions set forth above in this Section 7.1(d).

Notwithstanding the foregoing provisions of this Section 7.1, if by reason of *force majeure* the State Agency is unable in whole or in part to carry out the covenants, agreements, terms and conditions on its part contained in this Agency Financing Contract, the State Agency shall not be deemed in default during the continuance of such inability. The term “*force majeure*” means the following: acts of God; strikes; lockouts or other industrial disturbances or disputes; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or of its civil or military authorities; orders or restraints of the State or of any of its departments, agencies or officials or civil or military authorities of the State; wars, rebellions, insurrections; riots; civil disorders; blockade or embargo; landslides; earthquakes; fires; storms; droughts; floods; explosions; or any other cause or event not within the control of the State Agency.

The State Treasurer, with the prior written consent of the Fiscal Agent, may, at its election, waive any default or Agency Event of Default and its consequences hereunder and annul any notice thereof by written notice to the State Agency to such effect, and thereupon the respective rights of the Parties hereunder shall be as they would have been if such default or Agency Event of Default had not occurred.

ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING A PERMITTED TERMINATION EVENT, SHALL NOT CONSTITUTE AN AGENCY EVENT OF DEFAULT HEREUNDER.

Section 7.2 Rights of State Treasurer Following Agency Default Event. Upon the occurrence and continuance of an Agency Event of Default, the State Treasurer, at its option, may exercise any one or more of the following remedies:

(a) By written notice to the State Agency, require that the State Agency promptly return possession and use of the Property to the State Treasurer at any location specified in the United States (at the cost and expense of the State Agency) in good repair, working order and condition, ordinary wear and tear excepted;

(b) By written notice to the State Agency and the Fiscal Agent, declare an amount equal to all Agency Installment Payments to become due and payable hereunder, including but not limited to the Agency Interest Components thereof accrued and unpaid, to be immediately due and payable, without further demand;

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the Agency Installment Payments then due and thereafter becoming due, or to enforce the observance or performance of any covenant, agreement or obligation of the State Agency under this Agency Financing Contract; and

(d) Exercise any other rights or remedies it may have hereunder or under applicable law.

Section 7.3 No Remedy Exclusive; Non-Waiver. No remedy conferred upon or reserved to the State Treasurer hereunder or under applicable law is intended to or shall be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agency Financing Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or remedy accruing upon a default or an Agency Event of Default hereunder shall impair any such right or remedy or shall be construed to be a waiver of such default or Agency Event of Default, but any such right or remedy may be exercised from time to time and as often as may be deemed necessary or expedient. In order to exercise any remedy reserved to the State Treasurer hereunder, it shall not be necessary to give any notice, other than such notice as may be required hereunder. A waiver by the State Treasurer of any default or Agency Event of Default hereunder shall not constitute a waiver of any subsequent default or Agency Event of Default hereunder, and shall not affect or impair the rights or remedies of the State Treasurer in connection with any such subsequent default or Agency Event of Default.

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.1 No State Agency Assignment. The State Agency may not grant, sell, assign, transfer, convey, pledge, hypothecate or grant any security interest in any of its right, title or interest in, to or under this Agency Financing Contract. Any attempted grant, sale, assignment, conveyance, pledge, hypothecation or security interest shall be void.

Section 8.2 Notices to Agency. The notice address for the State Agency shall be as set forth in the Notice of Intent.